

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0059

**Financial Institutions Tax
For Tax Periods 1995-1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Financial Institutions Tax—Resident Taxpayer Credit

Authority: Mechanic Laundry & Supply, Inc. v. Indiana Department of State Revenue, 650 N.E.2d 1223 (Ind.Tax 1991); IC 6-5.5-2-4; IC 6-5.5-2-5; IC 6-5.5-2-5.3

Taxpayer protests the denial of Resident Taxpayer Credit for member banks included in Illinois unitary return.

II. State Tax Liability Credits—Enterprise Zone Loan Interest Tax Credit

Authority: IC 6-3.1-7-1; IC 6-3.1-7-2; Information Bulletin # 66

Taxpayer protests the denial of credit for income from interest on loans to Enterprise Zone businesses.

STATEMENT OF FACTS

Taxpayer, a bank holding company with bank subsidiaries operating in Indiana and two other states, files a combined Financial Institutions Tax return in Indiana with its subsidiaries. The Department of Revenue ("Department") conducted an audit for the years in question. As a result of this audit, the Department issued proposed assessments for 1996 and 1997, and reduced a refund for 1995. Taxpayer protests two issues. Further facts will be supplied as needed.

I. Financial Institutions Tax—Resident Taxpayer Credit

DISCUSSION

Taxpayer protests the Department's denial of credit taxpayer claimed against a Financial Institutional Franchise Tax for tax paid on a unitary income return filed in Illinois. IC 6-5.5-2-4 states:

For a taxpayer filing a combined return for its unitary group, the group's apportioned income for a taxable year consists of:

- (1) the aggregate adjusted gross income, from whatever source derived, of the resident taxpayer members of the unitary group and the nonresident members of the unitary group; multiplied by
- (2) the quotient of:
 - (A) all the receipts of the resident taxpayer members of the unitary group from whatever source derived plus the receipts of the nonresident taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by
 - (B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

IC 6-5.5-2-5 states:

- (a) A resident taxpayer or a resident member of a unitary group is entitled to a credit against the tax due under this article.
- (b) The amount of the credit equals the lesser of:
 - (1) the amount of creditable tax actually paid by the resident taxpayer or member to any other taxing jurisdiction; or
 - (2) an amount equal to the amount of creditable tax that would be due at the tax rate set forth in this article on:
 - (A) the taxpayer's adjusted gross income or apportioned income that is subject to taxation by the other taxing jurisdiction; or
 - (B) the taxpayer's adjusted gross income or apportioned income that is attributable to the other taxing jurisdiction using the rules for attributing gross receipts under IC 6-5.5-4.
- (c) As used in this section, "creditable tax" means in the case of a taxing jurisdiction that:
 - (1) measures its tax using net income:
 - (A) a direct net income tax; or
 - (B) a franchise or other tax measured by net income; or
 - (2) is not covered by subdivision (1):
 - (A) a tax based on deposits, investment capital or shares, net worth or capital, or a combination of these tax bases; or
 - (B) any other tax that is imposed instead of an income tax.

IC 6-5.5-2-5.3 states:

A credit provided in section 5 of this chapter may be allowed only after the taxpayer provides to the department satisfactory evidence of the payment of taxes to the other taxing jurisdiction.

The Department did not allow taxpayer this credit on the grounds that the statute applies to individual resident taxpayers, rather than the unitary group as a whole.

The language of IC 6-5.5-2-5(a), or more specifically, the legislature's use of the words "a resident taxpayer" and "a resident member" clearly shows the legislature's intent to identify a single taxpayer and for the credit to be calculated based upon a single resident taxpayer. The legislature also used the word "is" instead of the word "are" in order to show that the term "resident" should be singular and not plural. The Indiana Tax Court has addressed applying rules of grammar to interpret a statute, and has stated, "When the meaning of a statute is in doubt, a court may apply the rules of grammar to interpret the statute." Mechanic Laundry & Supply, Inc. v. Indiana Department of State Revenue, 650 N.E.2d 1223, 1228 (Ind.Tax 1995)(citing Leehaug v. State Bd. Of Tax Commissioners, 583 N.E.2d 211, 212 (Ind.Tax 1991)). Therefore, the credit is to be calculated with the word resident restricted to a single resident taxpayer or a single resident member.

In evaluating the individual resident's tax liability, IC 6-5.5-2-5(b) explains that the credit equals the lesser of the amount actually paid or the amount that would be due at the rate set forth under Indiana law. The numerator for the Indiana banks on the Illinois return was zero, therefore the amount actually paid by the Indiana member banks of the unitary group to Illinois is zero. Therefore, the amount of the credit for taxes paid by the Indiana banks is zero. Taxpayer has not met the burden of providing satisfactory evidence of payment of taxes to the other taxing jurisdiction imposed by IC 6-5.5-2-5.3.

FINDING

Taxpayer's protest is denied.

II. State Tax Liability Credits—Enterprise Zone Loan Interest Tax Credit

Taxpayer protests the denial of credit for five percent of the interest it received on loans to businesses in enterprise zones. The Department removed all interest received from loans for the purchase of real estate that was not leased or rented out. The Department referred to IC 6-3.1-7-1, which states in part:

"Qualified loan" means a loan made to an entity that uses the loan proceeds for:

- (1) a purpose that is directly related to a business located in an enterprise zone;
- (2) an improvement that increases the assessed value of real property located in an enterprise zone; or
- (3) rehabilitation, repair, or improvement of a residence.

Also, IC 6-3.1-7-2 states, in part:

- (a) A taxpayer is entitled to a credit against his state tax liability for a taxable year if he receives interest on a qualified loan in that taxable year.
- (b) The amount of the credit to which a taxpayer is entitled under this section is five percent (5%) multiplied by the amount of interest received by the taxpayer during the taxable year from qualified loans.

The Department also referred to Information Bulletin # 66, which deals with the subject of Enterprise Zones. The Information Bulletin explains in part:

The loan proceeds must be used for a purpose directly related to a business located in an enterprise zone or for an improvement that increases the assessed value of real property located in an enterprise zone. Thus, interest from mortgage loans to acquire property does not qualify unless the property is used for business purposes (such as renting or leasing).

Taxpayer asserts that neither the statute nor the information bulletin requires purchased real estate to be leased or rented out in order for the loans to qualify for the credit. Upon review, IC 6-3.1-7-1 and Information Bulletin # 66 do not require that the property be leased or rented in order to qualify. The only requirement is that the loan be used for a purpose that is directly related to a business located in the enterprise zone. Leasing and renting are examples of purposes directly related to businesses. These are not the only purposes a business might have. Since the loans were to businesses located in enterprise zones, and the loans were used for purposes directly related to those businesses, the loans are qualified as provided in IC 6-3.1-7-1(a).

The Department also removed some loans that went to not-for-profit organizations that were in the Enterprise Zones on the basis that the organizations did not pay property taxes. Taxpayer protests that there is no basis for this distinction. Upon review, no basis could be found for this distinction. There was no evidence that the loans to these organizations did not otherwise meet the criteria for “qualified loans” as described in IC 6-3.1-7-1.

The Department removed some loans on the basis that the loans were for businesses or other property that was not located in the Enterprise Zone. To qualify for the credit, the property must be in the Enterprise Zone. Therefore, any loans for businesses or other property that was not located in the Enterprise Zone were properly removed from the credit.

Taxpayer’s protest is sustained with regard to the loans that were removed because they were not for property that was leased or rented out. Taxpayer’s protest is sustained with regard to loans made to not-for-profit organizations. Taxpayer’s protest is denied with regard to loans made to businesses not located in the enterprise zones or other property not located in the enterprise zones.

FINDING

Taxpayer's protest is sustained in part and denied in part.

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